

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** April 5, 2006

**To:** The Commission  
(Meeting of April 13, 2006)

**From:** Delaney Hunter, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **AB 2822 (Mullin) - Railroad corporations: hazardous substances: fee.**  
**As Introduced February 24, 2006**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION:** Support.

**SUMMARY OF BILL:**

This bill would require the California Public Utilities Commission (CPUC) to assess a fee on all railroad corporations that transport a hazardous material in the state, and that are subject to the federal Hazardous Materials Transportation Authorization Act of 1994, for purposes related to the costs of developing and maintaining local emergency response capabilities. The bill would require the CPUC to set the fee schedule in an amount that is in accordance with the federal act. The State Board of Equalization would collect the fee, and the Secretary for Environmental Protection would expend the fee revenue, upon appropriation by the Legislature, on grants to cities and counties for the costs of developing and implementing emergency response capabilities to incidents involving hazardous materials being transported by rail.

**SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

- This bill would fund local governmental emergency response teams to mitigate and clean-up hazardous materials incidents and spills in the course of rail transportation in California.
- These local emergency response teams would be capable of mitigating any transportation emergency resulting from rail transportation under Title 49 U.S.C. § 5101, including, but not limited to, storage incidental to the movement of a hazardous material as specified in part 171.1 of Title 49 of the C.F.R.

**SUMMARY OF SUGGESTED AMENDMENTS (if any):**

None.

**DIVISION ANALYSIS (CPSD Division):**

- This bill carries out the traditional function and purpose of state government, i.e., to exercise the necessary police powers of the states under the Tenth<sup>1</sup> Amendment of the U.S. Constitution so as to protect the citizens and residents of the states.
- This bill would have little impact on the CPUC because the secretary of the California EPA would appropriate monies through grants for local emergency response teams throughout the state, and the California Board of Equalization would collect the fees from the applicable railroad corporations.

**PROGRAM BACKGROUND:**

N/A

**LEGISLATIVE HISTORY:**

Unknown.

**OTHER STATES' OR FEDERAL INFORMATION:**

- A program for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes, and local communities to deal with hazardous materials emergencies, particularly those involving transportation, has been established by the U.S. D.O.T.'s Pipeline and Hazardous Materials Safety Administration. (See 49 C.F.R. Pts. 110.1 et seq.)
- It is unknown whether California has applied for any of these grants or whether the available grants would preclude the state from assessing fees for payment of the costs of local emergency response teams should the state fail to meet these federal requirements. However, it should be expected that the railroads would argue that these federal grants would preclude the railroads from paying for these costs.

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<sup>1</sup> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

**FISCAL IMPACT ON THE CPUC:**

None.

**STATUS:** This bill is set to be heard by the Assembly Environmental Safety and Toxic Materials Committee on Tuesday, April 4, 2006.

**SUPPORT/OPPOSITION:**

Unknown.

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**Date:** April 5, 2006

**BILL LANGUAGE:**

BILL NUMBER: AB 2822     INTRODUCED  
BILL TEXT

INTRODUCED BY     Assembly Member Mullin

FEBRUARY 24, 2006

An act to add Section 7714.6 to the Public Utilities Code,  
relating to railroad corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2822, as introduced, Mullin     Railroad corporations: Hazardous substances: fee.

Existing law establishes the Hazardous Spill Prevention Account in the Railroad Accident Prevention and Response Fund, which is available for expenditure by the Secretary for Environmental Protection , for various purposes, including the creation, support, and maintenance of a Railroad Accident Prevention and Immediate Deployment Force, the state railroad accident prevention and immediate deployment plan, and programs, data registries, equipment, and facilities to respond to, and contain, toxic releases resulting from surface transportation accidents, including creation and support of a state-level and local toxic emergency response teams and specialized training for state and local emergency response officials.

This bill would require the commission to require all railroad corporations that transport a hazardous material in the state, and that are subject to the federal Hazardous Materials Transportation Authorization Act of 1994, to pay a fee for purposes related to the costs of developing and maintaining a local emergency response capability with regard to that transportation, for deposit in the Local Emergency Response Hazardous Spill Subaccount which this bill would establish in the Hazardous Spill Prevention Account. The bill would require the commission to set the fee schedule in an amount that is in accordance with that federal act to fund the appropriation grants made from the subaccount. The bill would require the State Board of Equalization to implement the collection of the fee in accordance with regulations which the secretary would be required to adopt.

The bill would authorize the secretary to expend the fee revenues in the subaccount, upon appropriation by the Legislature, to issue grants to cities and counties for the costs of developing and implementing emergency response capabilities to incidents involving hazardous materials being transported by rail, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7714.6 is added to the Public Utilities Code, to read:

7714.6. (a) The commission shall require each railroad corporation that transports a hazardous material in the state, and that is subject to Chapter 51 (commencing with Section 5101) of Title 49 of the United States Code, to pay a fee for purposes related to the cost of developing and maintaining a local emergency response capability with regard to that transportation. The commission shall set the fee schedule in an amount that is in accordance with subsection (g) of Section 5125 of Title 49 of the United States Code to fund the grants pursuant to paragraph (3) of subdivision (c).

(b) The State Board of Equalization shall implement the collection of the fee imposed pursuant to this section in accordance with regulations adopted pursuant to this section.

(c) (1) The Local Emergency Response Hazardous Spill Subaccount is hereby established in the Hazardous Spill Prevention Account created pursuant to Section 7714.

(2) The secretary shall administer the subaccount in accordance with this article, and shall develop and adopt regulations and guidelines necessary to carry out and enforce this section.

(3) All fees collected pursuant to this section shall be deposited in that subaccount, and the secretary may expend those fee revenues, upon appropriation by the Legislature, to issue grants to cities and counties for the costs of developing and implementing a capability for emergency response to an incident involving a hazardous material being transported by rail. The capability for emergency response shall include an emergency response for all transportation functions conducted by a railroad corporation that are subject to Chapter 51 (commencing with Section 5101) of Title 49 of the United States Code, including, but not limited to, storage incidental to the movement of a hazardous material as specified in Section 171.1 of Title 49 of the Code of Federal Regulations.

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